

# MEMORANDUM

**TO:** Development Review Committee

**FROM:** Joseph Haberman, Planner  
Brad Parrish, Planning Intern  
Andrew Trivette, Senior Biologist

**RE:** Amendment to a Minor Conditional Use

**DATE:** August 11, 2006



*We strive to be  
friendly, professional  
and fair*

**I. MEETING DATE:** August 22, 2006

## **II. REQUEST:**

### **A. Proposed Use:**

The applicant is requesting an Amendment to a Minor Conditional Use in order to bring the subject property into compliance with Chapter 9.5, Land Development Regulations, of the Monroe County Code (MCC), and thereby resolve Code Enforcement Cases 02-359A and CE03120091.

In accordance with a development alternative provided by the Planning Department in a Letter of Understanding (LOU) dated November 30, 2005, the applicant is planning to bring the subject property into compliance by removing two (2) unlawful dwelling units from the existing building and converting that floor area into nonresidential floor area. In addition, the applicant is planning to bring an unlawful addition to the building into compliance by obtaining an After-the-Fact Building Permit for its construction and a Non-residential Rate of Growth Ordinance (NROGO) allocation for its floor area.

### **B. Location:**

1. Stock Island, Mile Marker 5
2. 5730 Second Avenue
3. Block 47, Lots 3 & 4, Maloney Subdivision, Stock Island
4. Real Estate Number: 00126290.000000

### **C. Applicant:**

1. Property Owner: Raymond Vasquez, Florida Keys Electric, Inc.
2. Agent(s): John C. Rockwell and Jerry Coleman

## **III. PROCESS:**

Florida Keys Electric, Inc.  
Amendment to a Minor Conditional Use Staff Report  
Monroe County Planning & Environmental Resources

Pursuant to MCC Sec. 9.5-62, the Director of Planning may, in accordance with the procedures, standards and limitations of Article III of the Land Development Regulations and subject to such rights of appeal as are provided, approve applications for minor conditional use permits. Within ten (10) working days after receiving the report and recommendation of the Development Review Committee, the Director of Planning shall render a development order granting, granting with conditions, or denying the application for a minor conditional use permit.

If requested by the applicant, an adjacent property owner, an aggrieved or adversely affected person, or any resident or real property owner, a public hearing concerning the application shall be conducted by the Monroe County Planning Commission in accordance with the provisions of MCC Sec. 9.5-521(e).

#### **IV. PRIOR COUNTY ACTIONS:**

In 2002, Monroe County Code Enforcement opened Cases 02-359A and CE3120091 in response to the construction of a 630 ft<sup>2</sup> addition to the existing building, the construction of a covered patio, the installation of a fence, the installation of a concrete slab, and the carrying out of electrical improvements without the benefit of Building Permits.

On October 18, 2005, a pre-application conference involving Planning Department staff and the applicant was held to discuss potential development alternatives that would bring the subject property into compliance and resolve the violations. As a result of that discussion, a Letter of Understanding (LOU) was sent to the applicant on November 30, 2005.

#### **V. BACKGROUND INFORMATION:**

**A. Property Size:** 12,500 square feet (0.29 acres)

**B. Land Use District:** Mixed Use (MU)

**C. Future Land Use Map Designation:** Mixed Use / Commercial (MC)

**D. Proposed Tier Designation:** Tier III, Infill Area

**E. Existing Use and Conditions:**

The subject property is currently developed. There is a two-story building on the property which consists of 3,239 ft<sup>2</sup> of nonresidential and residential floor area. The first floor of the building is being used as an office and the second floor is composed of two (2) attached dwelling units. In addition to the building, there is a small shed to the rear of the property. Most of the remaining land area has been paved for parking.

**F. Existing Habitat and Vegetation:**

1  
2 This subject property is a developed scarified lot.  
3

4 **G. Community Character of the Immediate Vicinity:**  
5

6 Most of the properties in the immediate vicinity are designated as Mixed Use (MU).  
7 Consequently, the community character of the area is a mixture of commercial, light  
8 industrial, institutional, and residential uses. The neighboring properties to the East are  
9 developed with light manufacturing and commercial uses; to the South is a vacant  
10 property; to the West is a multi-family residential development; and to the North is Key  
11 West Baptist Temple, an institutional use.  
12

13 **VI. REVIEW OF APPLICATION**  
14

15 Pursuant to MCC Sec. 9.5-248, in the Mixed Use (MU) District, commercial retail (of low or  
16 medium intensity), office uses or any combination thereof of greater than twenty-five hundred  
17 (2,500) but less than ten thousand (10,000) square feet of floor area may only be permitted with  
18 minor conditional use approval. Currently, the existing building consists of 3,239 ft<sup>2</sup> of floor  
19 area. This total floor area includes the 630 ft<sup>2</sup> unlawful addition; however, it does not include the  
20 shed.  
21

22 According to the Property Appraiser's records, the two-story building was constructed in 1981  
23 and Building Permit A-5092 was issued in 1979 for the construction of an office building on  
24 Lots 3 and 4. Therefore, 2,612 ft<sup>2</sup> of floor area ((32.1 ft x 40.7 ft) x 2) from the originally  
25 permitted two-story building is considered lawfully-established. Since over 2,500 ft<sup>2</sup> of office  
26 floor area was lawfully-established prior to 1986 adoption of the Land Development  
27 Regulations, the property is deemed to have minor conditional approval. Therefore, this  
28 application shall be reviewed as an amendment to an approved minor conditional use.  
29

30 **Major issues of concern with the application:**  
31

32 **A. Unlawful Dwelling Units:**  
33

34 There are currently two (2) attached dwelling units within the existing building. No  
35 Building Permit or other approval was found that approved the dwelling units. In  
36 addition, although the applicant asserts that the dwelling units have been in existence  
37 since the early 1980s, the subject property's pre-1986 zoning designation of BU-3  
38 (Heavy Business) prohibited residential uses. Therefore, the dwelling units could not  
39 have been lawfully-established at that time. Further, Permit A-5092 was issued for the  
40 construction of an office building and does not mention the inclusion of any dwelling  
41 units.  
42

43 As per the development alternative selected by the applicant, the two (2) unlawful  
44 dwelling units shall be removed and converted back to nonresidential floor area before  
45 any additional development on the subject property can be permitted.  
46

1     **B.   Unlawful Nonresidential Floor Area:**

2  
3     As mentioned, 2,612 ft<sup>2</sup> of floor area ((32.1 ft x 40.7 ft) x 2) from the originally permitted  
4     two-story building is considered lawfully-established. However, the 630 ft<sup>2</sup> building  
5     addition and the shed (square footage unknown) were added to the subject property  
6     without the benefit of Building Permits and are considered unlawful. The applicant has  
7     applied for an after-the-fact Building Permit to permit the building addition. No  
8     application has been submitted for the shed, which first becomes visible in aerial  
9     photography from 2002.

10  
11     Pursuant to MCC Sec. 9.5-124.1(a), no Building Permit shall be issued that results in  
12     additional nonresidential floor area on a site unless that nonresidential development has  
13     received a nonresidential allocation award.

14  
15     As per the development alternative selected by the applicant, the applicant shall either  
16     receive a Non-Residential Rate of Growth Ordinance (NROGO) allocation for the  
17     unlawful nonresidential floor area or remove the unlawful nonresidential floor area  
18     before any additional development on the subject property can be permitted.

19  
20     (As a note, the unlawful addition included a 195 ft<sup>2</sup> covered porch (15 ft x 13 ft).  
21     Pursuant to MCC Sec. 9.5-124.3(9), unenclosed sunshades comprising in total not more  
22     than two hundred (200) square feet are not subject to NROGO.)

23  
24     **Conditional Use Review and Findings of Fact:**

25  
26     MCC Sec. 9.5-65 provides the standards which are applicable to all conditional uses. When  
27     considering applications for a conditional use permit, the Director of Planning and Planning  
28     Commission shall consider the extent to which:

29  
30     **A.   The conditional use is consistent with the purposes, goals, objectives and standards of**  
31     **the comprehensive plan and the land development regulations;**

32  
33     Pursuant to MCC Sec. 9.5-219, the purpose of the Mixed Use (MU) District is to establish  
34     or conserve areas of mixed uses, including commercial fishing, resorts, residential,  
35     institutional and commercial uses, and preserve these as areas representative of the  
36     character, economy and cultural history of the Florida Keys.

37  
38     Policy 101.4.5 of the Year 2010 Comprehensive Plan states that the principal purpose of  
39     the Mixed Use/ Commercial (MC) future land use category is to provide for the  
40     establishment of commercial zoning districts where various types of commercial retail and  
41     office may be permitted at intensities which are consistent with the community character  
42     and the natural environment. The land use category is intended to allow for the  
43     establishment of mixed use development patterns, where appropriate.

1 The proposed conditional use amendment is consistent with the purposes, goals, objectives  
2 and standards of the Mixed Use (MU) District and Mixed Use/ Commercial (MC) future  
3 land use category.  
4

5 **B. The conditional use is consistent with the community character of the immediate**  
6 **vicinity;**  
7

8 An office use is compatible with the community character of the immediate vicinity, an  
9 area which is composed of a mixture of commercial, light industrial, institutional, and  
10 residential uses.  
11

12 **C. The design of the proposed development minimizes adverse effects, including visual**  
13 **impacts, on adjacent properties;**  
14

15 The proposed development involves existing structures only, although the 630 ft<sup>2</sup> building  
16 addition and shed were not lawfully-established. Within the existing two-story building,  
17 the second story's floor area will be converted from residential to nonresidential, and this  
18 conversion is not anticipated to change the exterior appearance of the structure. The  
19 addition is only one-story and was constructed to the rear of the two-story building and the  
20 shed is located near the rear property line. Neither of the unlawful structures is visible  
21 from the public right-of-way or known to affect adversely affects adjacent properties.  
22

23 **D. The proposed use will have an adverse impact on the value of surrounding**  
24 **properties;**  
25

26 It is not anticipated that the addition of nonresidential floor area will have an adverse  
27 impact on the value of the surrounding properties.  
28

29 **E. The adequacy of public facilities and services;**  
30

31 1. Roads:

32 a. Localized impacts and access management: Access to the site is to remain the  
33 same.

34 b. Level of Service (LOS): The additional office floor area (from the building  
35 addition and the change of use from residential to office on the second floor) is  
36 expected to generate more traffic. It is not anticipated that this change will  
37 reduce the LOS on US 1. However, to confirm, the County's Traffic Engineer  
38 has requested a traffic letter.

39 2. Stormwater: The applicant shall coordinate with the County Engineer to determine  
40 compliance with MCC Sec. 9.5-293.

41 3. Sewer: The applicant shall coordinate with the Florida Department of Health to  
42 determine compliance with MCC Sec. 9.5-294.

43 4. Emergency Management: In a letter of coordination dated May 19, 2006, the Office  
44 of the Fire Marshall provided conceptual review of the project and requested that  
45 preliminary fire protection plans be included with improvements to water supply via

1 fire hydrant and that those plans be submitted to the Fire Marshal prior to final plan  
2 review for the issuance of a building permit.  
3 5. Other: Not applicable.  
4

5 **F. The applicant has the financial and technical capacity to complete the development as**  
6 **proposed;**  
7

8 The proposed development involves existing structures and the applicant has demonstrated  
9 the financial and technical capacity to bring those structures into compliance.  
10

11 **G. The development will adversely affect a known archaeological, historical or cultural**  
12 **resource;**  
13

14 The development will not adversely affect a known archaeological, historical or cultural  
15 resource.  
16

17 **H. Public access to public beaches and other waterfront areas is preserved as part of the**  
18 **proposed development;**  
19

20 The subject property is land-locked and therefore the proposed development will not have  
21 an adverse effect on public access to a waterfront area.  
22

23 **I. The project complies with all additional standards imposed on it by the Land**  
24 **Development Regulations;**  
25

26 1. Purpose of the Mixed Use (MU) District (Sec. 9.5-219): *In compliance.*  
27

28 2. Permitted Uses (Sec. 9.5-248): *In compliance if conditional use approval is granted.*  
29

30 In the Mixed Use (MU) District, commercial retail (of low or medium intensity),  
31 office uses or any combination thereof of greater than twenty-five hundred (2,500)  
32 but less than ten thousand (10,000) square feet of floor area may be permitted with  
33 minor conditional use approval.  
34

35 3. Maximum Floor Area Ratio (Sec. 9.5-269): *In compliance.*  
36

37 The maximum Floor Area Ratio (FAR) for office uses in the Mixed Use (MU)  
38 District is 0.40. The FAR is the total floor area of the building(s) on a lot divided by  
39 the gross area of the lot.  
40

41 According the boundary survey by Robert Reese, the property consists of 12,500 ft<sup>2</sup>  
42 (100 ft x 125 ft). Therefore, the maximum amount of office floor area allowable for  
43 the subject property is 5,000 ft<sup>2</sup> (12,500 ft<sup>2</sup> x 0.40).  
44

45 Currently, the existing building consists of 3,239 ft<sup>2</sup> of floor area (including the  
46 unlawful 630 ft<sup>2</sup> addition). If all of the floor area is converted to office, then the

1 subject property is in compliance by having less than the 5,000 ft<sup>2</sup> maximum amount  
2 of office floor area. In addition, there is a remaining 1,761 ft<sup>2</sup>, which may be for  
3 additional office floor area, including the floor area of the unlawful shed.  
4

5 **4. Required Open Space (Sec. 9.5-269 & 9.5-347): *Not in compliance.***  
6

7 In the Mixed Use (MU) District, there is a required open space ratio of 0.20.  
8 Therefore, at least twenty (20) percent of the site must remain open space. Open  
9 space means the portion of any parcel of land or water which is required to be  
10 maintained such that the area within its boundaries is open and unobstructed from the  
11 ground to the sky.  
12

13 According the boundary survey by Robert Reese, the property consists of 12,500 ft<sup>2</sup>  
14 (100 ft x 125 ft). Therefore, the amount of open space required for the subject  
15 property is 2,500 ft<sup>2</sup> (12,500 ft<sup>2</sup> x 0.20).  
16

17 During a site visit, staff observed that nearly all of the subject property is developed  
18 by either structures or pavement, with the exception of narrow strips of land along the  
19 southern and eastern property lines. Neither the boundary survey by Robert Reese  
20 nor the site plan by Peter Pike & Associates shows the dimensions or boundaries of  
21 the paved parking lot that surrounds the building, so staff was unable to calculate the  
22 total amount of open space. Paved roads and parking areas are not considered open  
23 space. Based on the observations made by staff, considerably less than twenty (20)  
24 percent of the subject property meets the definition of open space.  
25

26 **5. Minimum Yards (Sec. 9.5-281 & 9.5-349): *Not in compliance.***  
27

28 No structure or land shall be developed, used or occupied except in accordance with  
29 the bulk regulations. The required setbacks for office uses in the Mixed Use (MU)  
30 District are as follows: Front yard – fifteen (15) ft; Rear yard – ten (10) ft; and Side  
31 yard – ten (10)/fifteen (15) ft (where ten (10) ft is the required side yard for one side  
32 and fifteen (15) ft is the minimum combined total of both side yards).  
33

34 According to the site plan by Peter Pike & Associates, the subject property currently  
35 has a twenty-four (24) ft front yard setback, a fifty-two (52) ft rear yard setback, a  
36 twenty-three (23) ft eastern side yard setback, and a twenty-one (21) ft western side  
37 yard setback.  
38

39 The existing building is in compliance with the setback requirements. However, six  
40 (6) parking spaces in the front of the building are completely within the required front  
41 yard setback. In addition, during a site visit, staff observed that the unlawful shed  
42 may be within the required rear yard setback.  
43

44 Approval by the Planning Director as part of this application, pursuant to MCC Sec.  
45 9.5-66, or a variance, pursuant to MCC Sections 9.5-523 and 9.5-524, shall be

1 required to keep the existing parking in the front yard setback and/or the shed in the  
2 rear yard setback.

3  
4 **6. Maximum Height (Sec. 9.5-283): *In compliance.***

5  
6 No structure or building shall be developed that exceeds a maximum height of thirty-  
7 five (35) ft. The height of the existing structure is twenty-three (23) ft.

8  
9 **7. Fencing (Sec. 9.5-309): *In compliance.***

10  
11 The site is fenced with chain link fencing that is six (6) feet in height. Fences may be  
12 six (6) feet in height within the Stock Island Planning Area.

13  
14 **8. Floodplain Management (Sec. 9.5-316 & 9.5-317): *Compliance to be determined***  
15 ***upon submittal to Building Department.***

16  
17 The property is within the AE—EL 8 flood zone. All new structures must be built to  
18 standards that meet or exceed those of the MCC for flood protection. New  
19 construction or substantial improvements of any nonresidential structure within an  
20 AE flood zone shall have the lowest floor elevated to or above base flood level, or,  
21 together with attendant utility and sanitary facilities, be designed so that below the  
22 base flood level the structure is water-tight.

23  
24 **9. Required Parking (Sec. 9.5-352): *In compliance.***

25  
26 The required number of off-street parking for office uses is three spaces per 1,000 ft<sup>2</sup>  
27 of nonresidential floor area. If converted completely to office space, the property will  
28 have 3,239 ft<sup>2</sup> of nonresidential floor area (total includes the unlawful 630 ft<sup>2</sup>  
29 addition). Therefore, ten (10) off-street parking spaces are required. Currently, there  
30 are fifteen (15) marked off-street parking spaces on the subject property (however, six  
31 (6) of the off-street parking spaces are within the required front yard setback).

32  
33 **10. Required Loading and Unloading Spaces (Sec. 9.5-354): *In compliance.***

34  
35 All nonresidential uses of 0 to 2,499 square feet of ground floor area are required to  
36 have one (1) loading/unloading space.

37  
38 **11. Required Landscaping (Sec. 9.5-361): *Not in compliance.***

39  
40 Any development including more than six (6) parking spaces shall provide parking lot  
41 landscaping. This site is in the MU District which will require that a class “C”  
42 parking lot landscaping standard be utilized. Based on the required number of spaces  
43 (10), the total planting area shall be 179 ft<sup>2</sup> and must contain at least one (1) canopy  
44 tree and two (2) shrubs. The applicant has not provided a landscape plan with this  
45 application and no landscaping is currently located on site.



1       **12. Required Buffer-yards (Sec. 9.5-378 & 9.5-379): *In compliance.***

2  
3           No major street buffer or land use district boundary buffer is required for this project.

4  
5       **13. Outdoor Lighting (Sec. 9.5-391, 9.5-392 & 9.5-393): *Compliance to be determined***  
6       *upon submittal to Building Department.*

7  
8       **14. Signs (Sec. 9.5-404 & 9.5-405): *In compliance.***

9  
10           Currently, Florida Keys Electric, Inc. has one (1) wall mounted sign attached to the  
11           office building.

12  
13       **15. Access Standards (Sec. 9.5-421 & 9.5-427): *In compliance.***

14  
15       **16. Handicap Accessibility (Chapter 11, Florida Building Code): *Not in compliance***

16  
17           One (1) of the ten (10) required off-street parking spaces must meet the handicap  
18           parking design requirements set forth in Chapter 11 of the Florida Building Code, the  
19           Florida Accessibility Code for Building Construction.

20  
21       **17. Air Installation Compatible Use Zone (AICUZ) Building Requirements: *Compliance***  
22       *to be determined upon submittal to Building Department.*

## 23 24 **VII.RECOMMENDED CONDITIONS**

25  
26 Staff recommends to the Development Review Committee that the following conditions be  
27 applied:

- 28  
29       **A.** The two (2) unlawful dwelling units shall be removed and converted back to nonresidential  
30       floor area before any additional development on the subject property is permitted.
- 31  
32       **B.** The applicant shall either receive a Non-Residential Rate of Growth (NROGO) allocation  
33       for the 630 ft<sup>2</sup> of unlawful nonresidential floor area within the building addition or remove  
34       the unlawful nonresidential floor area from the property by demolishing the building  
35       addition.
- 36  
37       **C.** The applicant shall apply for and receive a Non-Residential Rate of Growth (NROGO)  
38       allocation and an after-the-fact building permit for the unlawful shed or remove the  
39       unlawful shed from the subject property.
- 40  
41       **D.** The applicant shall bring the subject property into compliance with Sec. 9.5-269 of the  
42       Monroe County Code by having at least 2,500 ft<sup>2</sup> of land area to meet the definition of  
43       open space.
- 44  
45       **E.** The applicant shall bring the subject property into compliance with Sec. 9.5-361 of the  
46       Monroe County Code by providing the required landscaping.

1  
2 **F.** Approval by the Planning Director as part of this application, pursuant to Sec. 9.5-66 of the  
3 Monroe County Code, or a variance, pursuant to Sections 9.5-523 and 9.5-524 of the  
4 Monroe County Code, shall be required to keep the existing parking in the front yard  
5 setback and/or the shed in the rear yard setback.  
6

7 **G.** The applicant shall convert one (1) of the existing off-street parking spaces into a  
8 handicapped parking space that meets the design requirements set forth in Chapter 11 of  
9 the Florida Building Code, the Florida Accessibility Code for Building Construction.  
10

## 11 **VIII. RECOMMENDATIONS**

12  
13 **A.** Staff Recommends approval to the Development Review Committee if all the above  
14 conditions are met.

15 **B.** Development Review Committee Recommendation to the Planning Director: To be  
16 determined at the August 22, 2006 DRC meeting.  
17

## 18 **IX. PLANS REVIEWED**

19 **A.** Boundary survey by Robert Reese, dated 7-19-2000

20 **B.** Site plan by Peter Pike & Associates, dated 11-14-2002

21 **C.** Floor Plan Schedules by Peter Pike & Associates, dated 11-14-2002

22 **D.** Elevations by Peter Pike & Associates, dated 11-14-2002  
23  
24  
25  
26